

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
COURT - 2**

COMPANY APPLICATION No. CP (IB) 296/NCLT/AHM/2020

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the Matter of:

Mrs. Sunandaben R. Patel

**Applicant/
Financial Creditor**

Versus

Rayon Patel Gelatine Private Limited

**Respondent/
Corporate Debtor**

Order Pronounced on: 30/03/2022

Coram:

Dr. DeeptiMukesh, Hon'ble Member(Judicial)

Kaushalendra Kumar Singh, Hon'ble Member (Technical)

MEMO OF PARTIES

Mrs. Sunandaben R. Patel

4, DuttVihar Society
Param Bungalow, Jetalpur Road
Near KalyanJewellers, Alkapuri
VADODARA 390 007

...

Applicant/Financial Creditor

Versus

Raymon Patel Gelatine Private Limited

61, Haribhakti Extension
Old Padra Road
VADODARA 390 015

...**Respondent/Corporate Debtor**

Appearance:

For the Applicant : Mr. Chirag Bhavsar, Advocate a/w
Mr. Kari Shroff, Advocate
For the Respondent : Mr. Arpit R. Singhvi, Advocate

ORDER

Per: Dr. DeeptiMukesh, Member (Judicial)

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016')read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by **Mrs. Sunandaben R. Patel** (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency process against **Raymon Patel Gelatine Private Limited** (for brevity 'Corporate Debtor').
2. The Applicant financial creditor is widow of late Mr. Ramanbhai B. Patel, who was co-founder and Director of the corporate debtor company.

3. The corporate debtor is a private limited company, incorporated under the provisions of companies Act, 1956 on 03.04.2003, duly registered with Registrar of Companies, Ahmedabad with CIN: U24231GJ2003PTC042207 and having registered office at, Vadodara, Gujarat State. Nominal share capital of the corporate debtor is Rs.52,00,00,000/- and paid up share capital of the company is Rs. 50,81,00,000/-. The corporate debtor is engaged in manufacture of gelatine and other derivative products.
4. It is submitted by the applicant that the corporate debtor is primarily a family run business and all the co-founders, directors and shareholders are family members and associates. In the year 1995, the corporate debtor decided to borrow funds from the applicant and the corporate debtor through its directors approached the applicant and proposed a financial arrangement wherein the applicant would lend loan amount which would carry assured interest at the rate of 18% per annum. Accordingly, it was orally agreed between the corporate debtor and applicant that the corporate debtor would borrow loans from the applicant in required intervals and in return the corporate debtor would pay interest at the rate of 18% per annum over such borrowings and also agreed to return the entire principal with interest as and when called upon by the applicant.
5. It is further submitted by the applicant that based on the aforesaid verbal agreement, whenever the corporate debtor approached the applicant for loans, in good faith, the applicant granted financial assistance at various intervals cumulatively amounting to Rs. 1,44,50,000/- (Rupees one crore forty-four lacs fifty thousand only) during the period from 03.06.1995 to

01.04.2016. Initially, the corporate debtor used to credit the assured interest in the applicant's account, however, subsequently, without any justification and intimation to the applicant, the corporate debtor arbitrarily and unilaterally reduced the rate of interest due against the loan which is evident from the ledger account of the applicant maintained by the corporate debtor. Copy of said ledger account is annexed to the application.

6. It is also submitted by the applicant that from 1st April, 2015 the corporate debtor completely stopped crediting the assured interest in the applicant's account as reflected in the summary of accounts of the applicant which is annexed to the application. Being aggrieved by such conduct of the corporate debtor, the applicant and her husband Mr. Ramanbhai Patel (since deceased) made various written and verbal requests to the corporate debtor to return the loan amount along with assured interest, but, the corporate debtor ignored all the requests and did not make any payment of the outstanding loan and interest. Thereafter, on 27th February, 2018, husband of the applicant Mr. Ramanbhai Patel (since deceased) addressed a letter to the corporate debtor requesting to repay the loan with interest.
7. It is submitted that on 6th February, 2019, Mr. Ramanbhai Patel passed away. Chartered Accountant of the applicant addressed letter dated 16.08.2019 to the corporate debtor regarding various matters requiring resolution and compliance followed by reminders dated 31.08.2019 & 16.09.2019. He also sent third reminder dated 03.10.2019 addressed to Smt. Prabhaven Patel, Director of the Corporate Debtor regarding non-receipt of consideration against sale of shares of company followed by reminder dated 15.10.2019. Despite receiving the aforesaid

letters, the corporate debtor did not reply, nor made payment of outstanding principal amount along with agreed interest. Thereafter, the applicant through her advocatesent a demand notice dated 31.12.2019 calling upon the corporate debtor to repay the entire amount of loan to the tune of Rs. 1,44,50,000/- along with outstanding assured interest to the tune of Rs. 7,10,10,263/- cumulatively amounting to Rs. 8,54,60,263/- (Rupees eight crores fifty-four lacs sixty thousand two hundred sixty-three only) as on 31st March, 2019. The corporate debtor through its advocate's reply dated 25.01.2020 for the first time vaguely denied the existence of the financial debt.As a result, the present application under Section 7 of the IB Code was filed by the applicant for total amount of Rs. 8,54,60,263/- (Rupees eight crores fifty-four lacs sixty thousand two hundred sixty-three only).

8. The corporate debtor filed affidavit in reply inter alia stating
- The alleged debt is not a financial debt and the applicant is not a financial creditor;
 - The applicant has failed to file any loan agreement or written terms and conditions;
 - In absence of the tenure and repayment obligation of the loan, it cannot be said that the debt has become due and payable, therefore, application under Section 7 of IB Code is not maintainable;
 - The instant application is barred by limitation;
 - The instant application is defective and not as per Section 7 of the IB Code;
 - The applicant has deliberately ignored and concealed various facts that are extremely important to establish the true and correct nature of the business relationship between themselves and the corporate debtor;

- The applicant has failed to produce any financial contract or written agreement;
 - The applicant attempted to sell the family house at Vadodara and Civil Miscellaneous Application No. 245 of 2019, Special Civil Suit No. 296 of 2019 and Special Civil Suit No. 398 of 2019 and copies of the case status of the aforesaid suits are annexed to the reply;
 - The respondent company does not owe any amount as debt or otherwise to the applicant so as to make them liable for action under IBC.
9. The applicant filed rejoinder rebutting the contentions raised by the corporate debtor;
- The corporate debtor on its own, has accepted in its books of account a sum of Rs. 2,35,78,561.33 against the applicant;
 - Initial report from the Information Utility NeSL reflects amount overdue as Rs. 8,54,60,263/-
 - The defence of limitation does not survive as the amounts sought to be recovered are in the nature of deposits for which limitation begins only when there is a demand and not prior thereto;
10. The applicant filed written submissions reiterating the pleadings made in the application and enclosing the following documents along with Judgements of Hon'ble Supreme Court and Hon'ble High Courts relied upon by the applicant:

Documents:

- Copy of letter dated 31.01.2017 along with its enclosures;
- Copy of email dated 18th March, 2019;

- Copy of letter dated 07.03.2019 addressed by the applicant to the corporate debtor authorising Mr. Atul Shade, Chartered Accountants
- Copy of letter dated 07.03.2019 written by the applicant to the corporate debtor;
- Final report of Information Utility (NeSL) dated 08.08.2020;

Judgements

- Mahabir Cold Storage vs. C.I.T. Patna (1991 Supp (1) Supreme Court Cases 402);

"The entries in the books of accounts of the appellant would amount to an acknowledgement of the liability within the meaning of Section 18 of the Limitation Act, 1963 and extend the period of limitation for the discharge of the liability as debt."

- State of UP &Ors vs. Jeet S Bisht&Anr. (2007) 6 SCC 586);

"the amounts mentioned in the returns of the company amount to acknowledgement of liability"

- Jaydeo s/o. MahadeoParate v/s State of Maharashtra &Ors. (2006) 2 Mah LJ 497)

Not much relevant to this case

- D.J. Malpani v/s. Commissioner of Central Excise, Nashik (2019) 9 SCC 120)

Not much relevant to this case

- State of UP &Anr. v/s. Synthetics and Chemicals Limited &Anr. (1991) 4 SCC 139)

'law declared' – decision not express, nor founded on reasons nor proceeding on consideration of the issue, held, cannot be deemed as 'law declared' (per Sahai, J.) – Precedent – Jurisdiction"

- Arnit Das v/s. State of Bihar (2000) 5 SCC 488)

"Ratio decidendi – Rule of sub silentio – when a particular point of law is not consciously determined by the court, that does not form part of ratio decidendi and is not binding"

- One Granites v/s. State of UP &Ors. (2001) 3 SCC 537)
- *'law declared' – decision not express, nor founded on reasons nor proceeding on consideration of the issue, held, cannot be deemed as 'law declared' (per Sahai, J.) – Precedent – Jurisdiction"*
- Divisional Controller, KSRTC v/s. Mahadev Shetty &Anr. (2003) 7 SCC 197)

Not much relevant to this case.

- Bengal Silk Mills Co. v/s. Ismail Golam Hossain Ariff (AIR 1962 Cal 115)

"That balance sheets in question are sufficient acknowledgements within the meaning of Section 9 of Limitation Act"

- R. Sureshchandra & Co v/s. Vadnere Chemical Works and others (AIR 1991 Bom 44)

"That the Hon'ble Supreme Court in AIR 1953 SC 255 opined that unconditional acknowledgement was sufficient to furnish cause of action or it implied a promise to pay"

- State Bank of India v/s. Hegde & Golay Ltd. (1987) vol. 62 company cases, 239: 1983 SCC Online Kar 80: ILR 1987 Kar 2946)

"if exact amount of debt disputed, winding up order could be made without creditor quantifying the exact amount. Acknowledgement I balance sheet is acknowledgment under Section 18 Limitation Act, 1963 – signature as Directors not as creditors, without any fiduciary relationship in personal capacity does not invalidate acknowledgement"

- The Commissioner of Income Tax – III vs. Shri Vardhman Overseas Ltd. (2011 SCC Online Del 5599: (2012) 343 ITR 408)

Not much relevant to this case

- Abdul Hamid Sahib &Ors. v/s. Rahmat Br. (AIR 1965 Mad 427)

"The terms "loans" and "deposits" are not mutually exclusive terms. But, when the repayment is to be, it furnishes the real point of distinction between the two concepts, a loan is repayable the minute it is incurred."

- Shri Basant Lal Agarwal vs. Lloyds Finance Ltd. (2003 SCC Online Bom 1129)

"The terms "loans" and "deposits" are not mutually exclusive terms. But, when the repayment is to be, it furnishes the real point of distinction between the two concepts, a loan is repayable the minute it is incurred."

11. The corporate debtor filed written submissions inter alia stating:

- In absence of any written loan agreement with terms and conditions such as the amount of loan, tenure of loan, interest payable, repayment terms etc. an application cannot be filed under Section 7 of the IB Code;
- Mere fact that a company paid interest at the rate of 12% per annum during certain period cannot be the ground to hold that the debt comes within the meaning of financial debt;
- In absence of any evidence the applicant cannot claim that the loan, if any, given by the applicant comes within the meaning of financial debt in terms of sub-section (8)(a) of Section 5 of the Code;

12.As per part IV of form 1 the date of default is 17.05.2019 and application is filed on 11.08.2020, which is within the period of limitation and not barred by law.

13. The registered office of the corporate debtor is situated in Ahmedabad and, therefore, this Tribunal has jurisdiction to entertain and try this application.
14. Heard submissions and perused the documents on record. The applicant has brought on record the ledger account of the applicant maintained by the corporate debtor. Ledger account of the applicant for the period 1st April 2016 – 31st March 2017 and 1st April 2017 – 31st March 2018 in which the corporate debtor itself has admitted existence of debt. On perusal of the record it is found that pursuant to the complaint made by the applicant against the corporate debtor, Mr. Ramdas M.P., representative of the corporate debtor vide letter dated 31.01.2017 had requested Commissioner of Police, Mumbai requesting for a copy of the complaint. Summary of loan account of the applicant, annexed to the said letter dated 31.01.2017 clearly reflects that a sum of Rs. 4,72,320.00 was paid to the applicant on 01.04.2014 towards interest undoubtedly amounting to acknowledgement of debt. Even the certificate issued by NeSL dated 21.02.2020 records that the status of authentication by debtor as "deemed to be authenticated".
15. On perusal of the records it is found that the corporate debtor had sent an email on 12.01.2022 proposing a settlement which was rejected by the applicant vide email dated 17.01.2022. Subsequently, the corporate debtor had sent another email dated 23.01.2022 proposing a modified settlement which was also rejected by the applicant on 25.01.2022. Lastly, vide letter dated 07.02.2022, the corporate debtor has sent a settlement proposal which is available on record. This amounts to acknowledgement of debt time and again. All the above

documents clearly reflect that the corporate debtor had availed loan being financial debt and has failed to repay the same. Default has occurred which is also admitted on various occasions by the corporate debtor, leaving no scope to reject the application.

16. The present application is complete in terms of Section 7 (5) of the Code. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt which is acknowledged and admitted in writing by the corporate debtor. In light of the above facts and records the present application is admitted and CIRP is ordered to be initiated against corporate debtor.
17. The applicant has proposed the name of Mr. Bhaskar Gopal Shetty as Insolvency Resolution Professional, who is be and hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-001/IP-P-01285/2018-19/12003 having office at C-77, Shanti Shopping Centre, Mira Road East, Maharashtra 401 107 having e-mail ID cabgshetty@gmail.com and contact No. 9930897310, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP is filed in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed which is on record.
18. We direct the Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Bhaskar Gopal Shetty to meet out the expenses for performing functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate

Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.

19. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
20. As a consequence of admission of CP (IB) No. 296/NCLT/AHM/2020 Interlocutory Application No. 69 of 2022 stands disposed of.
21. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

-Sd/-

- Sd/ -

**Kaushalendra Kumar Singh
Member (Technical)**

**Dr. Deepti Mukesh
Member (Judicial)**

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